

CHAPTER 10. PFC LEVELS ABOVE \$3

SECTION 1. GENERAL

10-1. OVERVIEW. The “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century” (AIR 21) (P.L. 106-181) was signed into law on April 5, 2000. Among other important provisions affecting FAA programs, this law grants new PFC collection authority and establishes new requirements and features for the PFC program. It enables a public agency to apply to the FAA to increase the PFC level that it may charge to \$4 or \$4.50. For a public agency to qualify for a PFC level above \$3, the law requires that the FAA must review the public agency’s application or amendment request to make specified findings that are additional to those already required under the PFC statute and regulation.

Under AIR 21, the FAA must find the following for any project approved for collection at the \$4 or \$4.50 level:

1. The project cannot be paid for from funds reasonably expected to be available from the AIP.
2. If the project is an eligible surface transportation or terminal project, the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
3. In the case of a large or medium hub airport seeking the higher PFC, the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport.
4. In the case of a large or medium hub airport at which one or two air carriers control more than 50 percent of the passenger boardings, the public agency has submitted a competition plan to the Secretary (effective in FY 2001 and thereafter). (This provision also applies to collections approved at a \$1, \$2, or \$3 PFC level.)

Implementation of these and other provisions of AIR 21 was accomplished by the publication of "14 CFR Part 158, Passenger Facility Charge; Final Rule" in the Federal Register on May 30, 2000 (effective June 29, 2000) 65 F. R. 34536 (May 30, 2000). Procedures for implementing these provisions are discussed in sections 2, 3, 4, and 5 of this chapter. Section 5 also discusses other modifications to the PFC program.

10-2 to 10-5. RESERVED.

SECTION 2. PFC LEVELS ABOVE \$3 AT SMALL AIRPORTS

10- 6. METHOD TO EVALUATE PFC LEVEL ABOVE \$3 AT SMALL

AIRPORTS. The procedure for increasing the PFC level is relatively unchanged from that required to approve a \$3 PFC. Small airports (here meaning small hubs, non-hub primary, and non-primary commercial service airports) collecting a \$1, \$2, or \$3 PFC under a previously-approved PFC application may raise the PFC level for projects in that application to \$4 or \$4.50 through a type B amendment (see 12-6). A new application is required for new projects or new airport locations. Projects in a type B amendment or a new application for which a \$4 or \$4.50 PFC level is requested must meet the requirements described in this section, in addition to all requirements for a PFC of \$3 or less described elsewhere in this order.

10-7. FINDING THAT PROJECTS CANNOT BE AIP FUNDED. If a higher than \$3 PFC level is sought for any otherwise-approvable project, the FAA Airports office must find that the project cannot be paid for from funds reasonably expected to be available from the AIP.

a. Method of Determination. One method by which the FAA can make this determination is by analyzing the capital improvement plan (CIP) or other documentation of planned improvements for each airport at which a PFC financed project is proposed. A CIP (or other planning document) has always been required of the public agency under 14 CFR Part 158.25(b)(5), but greater emphasis should now be placed on identifying all planned projects and all proposed funding sources. Other relevant material includes the FAA's ACIP, which identifies candidates for AIP funding on a three-year basis. The FAA Airports office will review each project identified for PFC funding above \$3 in this material to determine if AIP funding could reasonably be expected for that project over the period of the plan and at what amount. The FAA Airports office will generally be able to make the required finding on AIP funding without imposing new requirements for financial data on the public agency. However, due to the critical importance of the CIP in this process, the FAA Airports office should caution the public agency that an inadequate or incomplete CIP may hamper the FAA's ability to make this determination and might result in the project being denied approval for the higher PFC level.

As a rule of thumb, all PFC eligible projects in the NPIAS, but not in a region's three year ACIP, would meet this criterion. All projects that fall outside the AIP national priority threshold (and have no extenuating circumstances such as inclusion in any Regional Airport Plan or regional strategic plan) would meet this criterion. Projects that are included for funding in the first three years of a region's ACIP, or are considered high priority under the national priority system would not meet this criterion. A PFC matching share to an AIP grant, along with any allowable amount of a project's cost that cannot be AIP funded, would also qualify for the higher PFC.

In the event that the FAA determines that at least a portion of the amount requested for PFC funding could possibly be paid for from funds reasonably expected to be available from the AIP, the FAA cannot approve the full amount requested by the public agency at the higher level. The public agency must anticipate this contingency in its application and select one of two alternate methods for approval through its response to Item 14b of the Attachment B for that project. Based on the public agency's election, the FAA will approve the project either for the PFC eligible portion of the full amount requested by the public agency at a \$3 PFC level or for the amount of the local match at a \$4.50 PFC level. If the public agency fails to complete Item 14b, the FAA will approve the local match at a \$4.50 PFC level.

The public agency should be advised that implementation of the project at a \$3 PFC level could disqualify the project for a future discretionary AIP grant, unlike entitlement funds and Letter of Intent (LOI) grants, discretionary funds cannot be used to reimburse project costs already incurred. A project funded at a \$3 PFC level could be subsequently reimbursed with an AIP entitlement grant, although this action would require that the public agency submit a plan under Part 158.39 to use the reimbursed PFC revenues. If the "local match at a \$4.50 level" is chosen and the remainder of the project costs fail to compete successfully for AIP funding, the public agency could submit a PFC amendment at that time to fund the remainder of the project at the higher PFC level. Similarly, if the "total PFC funding at a \$3 PFC level" is chosen and the expected AIP funds do not materialize, the public agency could request an amendment to change the PFC level to \$4 or \$4.50 for any uncollected amounts outstanding.

In some cases, the FAA may determine that a project could be funded through the AIP, but not in the time period and/or the amount required for implementation of the project by the public agency. In this case, provided the FAA agrees that the timeframe required by the public agency is not arbitrary or unfounded, the FAA could approve the project for funding at the \$4.50 or \$4 level. Note that this determination must be based on the project implementation schedule included by the public agency in its PFC application.

Unless otherwise advised by APP, the FAA Airports office should assume that AIP funding is available at authorized levels under current law for that period. Authorized AIP levels may be known for two or more years in advance and set a ceiling on AIP availability.

b. Procedure. For a new application, the FAA Airports Office will indicate its findings concerning a reasonable expectation of AIP funding by comment in item 14 of the Attachment B for each project proposed for a PFC level above \$3 during the review of the application. For an amendment, the FAA Airports Office will prepare a summary for the application file indicating its findings for each project proposed for a PFC level above \$3 prior to issuance of a decision letter on the amendment.

In particular, for each such proposed project, the FAA's "Determination Paragraph" in the ROD or amendment decision letter will contain the appropriate statement as indicated on the ROD or amendment letter document templates (see intranet site).

The above process is not significantly different from the process the FAA has used for imposition of a \$1, \$2, \$3 PFC, in that the FAA reviews the public agency's CIP to assure that the amounts requested for PFC collection, when combined with other sources of funding for the project, do not exceed allowable project costs. The one area of difference is that the FAA Airports office now has an obligation to independently review the CIP to determine the amounts, if any, of AIP funds reasonably expected for the project.

c. Examples of Determinations of Reasonable Expectation of AIP Funding.

Example 1: A public agency operating a FAR Part 139 certificated non-hub primary airport applies to impose a \$4.50 PFC to finance 100 percent of the costs of acquiring an ARFF vehicle to replace an ARFF vehicle that has outlived its useful life. The ARFF vehicle being replaced is necessary for the airport to meet the minimum ARFF capability requirements of its certificate under Part 139. The ARFF vehicle is projected to cost \$500,000. The FAA's ACIP for this airport includes the ARFF vehicle for funding within the next 2 years, and applying current AIP National Priority System priorities and current law assumptions about AIP funding levels, the project is reasonably expected to be funded. The PFC ROD should approve PFC funding for this project at a \$4.50 level in the amount of \$50,000 (the local matching share to the AIP grant), unless the public agency has indicated in the Attachment B that it would prefer that the project be approved for 100 percent of the requested amount at a \$3.00 PFC level.

Example 2: A small hub airport is proposing to construct a new air carrier runway with total costs (including taxiways and lighting) of \$100 million. The FAA has agreed to finance \$50 million of total project costs with an LOI, and the proposed LOI is currently pending Congressional review. The public agency proposes to finance the remaining \$50 million through a combination of increased landing fees (\$15 million) and a \$4.50 PFC (\$35 million). The ROD should approve PFC funding for this project at the \$4.50 level for the \$35 million amount requested by the public agency.

10-8. FINDING THAT AIRSIDE NEEDS ARE MET. If the higher than \$3 PFC level is sought for an eligible surface transportation project (e.g., access road, light rail connection) or terminal project (other than aircraft gates), the FAA Airports office must find that the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons,

and aircraft gates, before the FAA can approve the higher PFC level for the non-airside project.

a. Method of Determination. One method by which the FAA can make this determination is by analyzing the airport's CIP, airport layout plan, master plans, airport certification inspection reports, or other planning documents already available to the FAA. The FAA Airports office must be satisfied that there are no unmet airfield development needs which the public agency cannot reasonably expect to fund through AIP grants, or which the public agency has not made provisions to fund through airport rates and charges, state or local grants, PFC's, or other airport revenues. Unmet airfield development needs should be based on current or reasonably foreseeable airfield traffic requirements, typically over a 3 to 5 year planning horizon. In some cases, a longer development timeframe may be warranted. The FAA Airports office shall prepare a brief written summary of its analysis for inclusion in the PFC application file.

b. Procedure. Once the FAA Airports office makes a determination regarding compliance with this requirement, the ROD or amendment decision letter will include the appropriate paragraph from the ROD or amendment template on the FAA intranet site.

10-9. TREATMENT OF A PROJECT QUALIFYING FOR PFC APPROVAL AT \$1, \$2, OR \$3 LEVEL BUT NOT AT LEVELS ABOVE \$3. A public agency may seek funding for a project at the \$4 or \$4.50 PFC level that does not qualify under the criteria for the higher than \$3 PFC level, but which does qualify at the \$3 level. In this case, the FAA would approve a \$3 PFC level for the projects not qualifying under the higher than \$3 level criteria or the public agency could withdraw the project. The FAA would list in its decision the projects approved at the \$4 or \$4.50 and \$1, \$2, or \$3 levels, respectively.

10-10. RESERVED.

SECTION 3. PFC LEVELS ABOVE \$3 AT MEDIUM AND LARGE HUB AIRPORTS

10-11. METHOD TO RAISE PFC LEVEL ABOVE \$3 AT LARGE AND MEDIUM HUB AIRPORTS. The methods, requirements, and procedures described in section 2 for raising the PFC level at small airports must also be met in full by a project at a large or medium hub airport. In addition, to approve a higher than \$3 PFC level for a project at a large or medium hub airport, AIR 21 requires that the FAA must find that the project makes a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport. The finding of significant contribution is in

addition to the finding of adequate justification already required for all PFC projects.

If more than 50 percent of the enplanements of a medium or large hub airport are attributable to one or two air carriers, the requirements regarding a competition plan (described under section 10-32(a) of this chapter) must also be met.

10-12. DETERMINATION OF SIGNIFICANT CONTRIBUTION. The Final Rule implementing the AIR 21 PFC provisions established the basic items of interest to the FAA in establishing significant contribution. The FAA will develop more specific criteria for the significant contribution requirement through individual PFC RODs. In particular, the FAA will consider all relevant factors, including but not limited to the following, in assessing whether the significant contribution requirement has been met:

a. Safety and security projects. Does the project advance airport safety and/or security? In the case of AIP discretionary funds, highest priority is usually given to those projects that meet regulatory requirements for safety and security under 14 CFR part 139 and part 107, respectively. A similar approach to assessing PFC significance may be appropriate.

b. Congestion (Capacity). Does the project support or is it part of a capacity project to which the FAA has allocated Federal resources or that would qualify for such resources? For example, is the project included in an AIP LOI or does it satisfy the FAA's benefit-cost criteria for large AIP discretionary investments? Has the project been identified as an important item in an FAA Airport Capacity Enhancement Plan? Does the project alleviate an important constraint on airport growth or service?

c. Noise. Does the project affect the noise-impacted areas around the airport? Historically, higher priority for AIP discretionary grants has been given to projects in noisier areas over projects in less noisy areas, all other factors being equal. A similar approach to assessing PFC significance may be appropriate.

d. Competition. Does the project mitigate or remove barriers to increased airline competition at the airport? Has the project been identified as an essential component in the airport's competition plan or other similar documents (e.g., the discussion of competition required under §158.25(b)(7)) submitted to the FAA?

The public agency should provide sufficient information to support its assertion that a project makes a significant contribution to one or more of the above categories. In the case of a project to reduce congestion, the information may include a quantified measure of reduced delay per aircraft operation or reference

a study that measures the expected congestion reduction benefits. Similarly, an assertion that a project enhances competition may be supported by information on the number of new operations that the project will allow, the number of new entrant airlines it will accommodate, the effect on fares at the airport, and/or other measures of increased competition. In general, because it is a higher standard than adequate justification, more documentation is appropriate to establish significant contribution than is typically needed for adequate justification.

10-13. PROCEDURES.

a. New applications. The FAA Airports office will utilize the FAA response section of item 7 of the Attachment B for every project for which a PFC level higher than \$3 is sought to sufficiently document its analysis of the project's significant contribution. For each project for which a PFC level above \$3 is sought and which also meets the requirements discussed in sections 10-7 and 10-8 above, the determination paragraph for that project in the ROD will include the specified statements as shown in the ROD template on the FAA intranet site, which represent standardized statements regarding whether the applicable criteria for approval of the higher level PFC have been met.

b. Amendments. Prior to issuance of a decision letter on the amendment, the FAA Airports office will prepare a summary (or will mark up the Attachment B if one is submitted in the amendment request) for the application file indicating its findings for each project proposed for a PFC level above \$3. For each project for which a PFC level above \$3 is sought and which also meets the requirements discussed in sections 10-7 and 10-8 above, the amendment decision letter will include the specified statements for 10-7, 10-8, and 10-12 (modified as needed) as shown on the amendment letter template on the FAA intranet site. These templates contain standardized statements regarding whether the applicable criteria for approval of the higher level PFC have been met.

10-14 to 10-15. RESERVED.

SECTION 4. ESTABLISHMENT OF APPLICATION PFC LEVEL

10-21. OVERVIEW. The introduction by AIR 21 of additional eligibility requirements for projects to be funded with PFC levels above \$3 raises the potential that, for any given airport, the FAA may approve some projects at \$3 PFC levels and others at \$4 or \$4.50 levels. This occurrence may be true for projects within a given application and/or projects in different applications. This occurrence is most likely to arise in the case of an application or amendment to increase the PFC above \$3 at a medium or large hub airport, where each project must satisfy the significant contribution standard to qualify for the higher level of

funding. A project the FAA finds to be adequately justified that did not rise to the level of making a significant contribution could be approved at the \$3 level. In that only one PFC collection level can apply at a given time at an airport, this section provides guidance on how to administer the PFC level at an airport which has a mix of specific projects (either within an application or across applications) qualifying at the \$3 and \$4 or \$4.50 levels.

10-22. SETTING THE PFC LEVEL FOR A SINGLE PROJECT APPLICATION.

In the case of a public agency with a single PFC application outstanding (either pending or being amended) consisting of a single project, the PFC level that will apply to that application is determined according to the project's compliance with the criteria specified in sections 10-7, 10-8, and (if applicable) 10-12.

10-23. POLICY ON SETTING THE PFC LEVEL FOR MULTIPLE PROJECTS WITH MIXED PFC LEVELS.

Public agencies typically include multiple projects in a given PFC application. In the case where a public agency has only one application outstanding, and all the projects qualify at a given PFC level, the selection of the appropriate PFC level for the application is clear. However, as noted, the projects in an application may qualify at different PFC levels, particularly at medium or large hub airports.

Since only one PFC level can apply at an airport at any given point in time, one approach to this issue would be to tie the PFC level to individual projects as though each project were covered by a separate application. Under this approach if a PFC application contained three projects, each valued at \$20 million, with two projects meeting the significant contribution test and the third qualifying only for a \$3 PFC, the PFC level could be established as follows: a \$4.50 PFC would be authorized with a charge effective date coinciding with the earliest charge effective date for the application and a charge expiration date coinciding with the projected date at which \$40 million for the two projects would be collected. A \$3 PFC would be authorized with a charge effective date set at the expiration date for the \$4.50 PFC collection and a charge expiration date set to coincide with the projected date at which an additional \$20 million would be collected.

This project-by-project approach, however, is not required to implement the statute and would seriously add to the burden of administering the PFC program as it exists today. The principal unit of administration for the PFC program is the application, typically consisting of multiple projects, rather than the project itself. Moreover, many, if not most public agencies have outstanding approvals for tens, if not hundreds, of individual PFC projects under one or more discrete applications. Each approved application has a charge effective date and charge expiration date. These dates are relied on primarily to establish when an application is financially complete. PFC funds are commingled for all projects within an application. Under the project-by-project approach outlined above, commingling would no longer be possible. Public agencies would be required to

account for and track PFC collections on a project-by-project basis. The amendment process would also become more complex. Carriers and their agents would bear much of the burden of administering constantly changing PFC levels.

An alternate approach, emphasizing the assignment of a single PFC charge to a whole application, is more consistent with current application-based regulatory treatment and would comply with AIR 21. In particular, the \$4 or \$4.50 authority established by AIR 21 represents a \$1 or \$1.50 premium above the currently authorized \$3 PFC base charge for an application. The premium can be authorized when a sufficient value of projects in the application can be shown to exceed the adequate justification standard and satisfy the higher standards associated with the higher PFC charge.

Thus, on an application basis, the FAA may authorize a public agency to collect the \$1 or \$1.50 premium over the \$3 PFC base level until the total revenue collected through the PFC premium for that application equals the total value of the projects approved for premium collection status. Once that total value is collected, a public agency would no longer be authorized to collect the premium and it would be required to reduce its PFC to \$3. However, if in the case of a \$4.50 PFC, the value of premium projects equaled at least one-third (33 percent) of the total value of uncollected PFC authority, the total premium value would not be collected before all uncollected PFC authority were collected and there would be no need to step down the PFC to the \$3 level. Likewise, in the case of a \$4 PFC, if the value of premium projects equaled at least one-fourth (25 percent) of the total value of uncollected PFC authority, the total premium value would not be collected before all uncollected PFC authority were collected and there would be no need to step down the PFC to \$3.

The FAA will administer the PFC program, in the case of an application containing projects with mixed authorized PFC levels, by allowing collection at \$4.50 or \$4 as long as the minimum thresholds described above (33 percent and 25 percent, respectively) are met. Because of the problems associated with fluctuating PFC levels, FAA Airports offices should encourage public agencies to meet the minimum thresholds allowing collections to remain at the higher level. Only if the thresholds cannot be met would the approved PFC level be reduced to \$3 once the value of the premium projects were collected through the assessment of the \$1 or \$1.50 premium. A discussion of specific application scenarios follows, including strategies to encourage public agencies to successfully meet the minimum thresholds and avoid fluctuating PFC levels.

10-24. PROCEDURE TO SET THE PFC LEVEL FOR A SINGLE APPLICATION WITH MULTIPLE PROJECTS. FAA Airports offices should apply the procedures described in paragraphs a, b, and c below to set a single PFC level for a multiple project application either by new application or by amendment.

a. PFC Level Set Based On Threshold Shares. The method for setting the prevailing PFC level for a multiple project application is based on the percentage of uncollected PFC authority that qualifies for the higher PFC levels. Provided that the approved collections of projects qualifying for this premium authority in an application are, as a share of total approved authority for the application, at least equal to the share that the \$1.50 or \$1 premium is of the \$4.50 or \$4 PFC level (33 percent or 25 percent, respectively), the FAA will authorize a \$4.50 or \$4 PFC level for the overall PFC application.

b. PFC Level When Threshold Levels Are Not Met. If some projects in an application qualify at \$4 or \$4.50, but the share of qualifying costs falls below the percentages in section 10-24a, the FAA will set the PFC level according to one of the following methods, based on instructions provided by the public agency in its application or amendment. The public agency's submission should include documentation that the public agency's election was included in the consultation:

1. Shares Below 33 Percent. If the share of qualifying projects is below 33 percent but above 25 percent, and the public agency requested a \$4.50 level, the FAA could approve a \$4 PFC level, or a \$3 PFC level, or (under the terms of paragraph 10-24c) a \$4.50 level for a portion of the current collection authority of the application.

2. Shares Below 25 Percent. If the share is below 25 percent, the FAA could approve a \$3 PFC level or (under the terms of paragraph 10-24c) a \$4.50 or \$4 level for a portion of the current collection authority of the application.

The FAA would also offer the public agency the opportunity to withdraw its request for a higher PFC if the PFC level the public agency requested is less than the level the FAA can approve for the whole application, just as the public agency is now free to withdraw projects from an application before the FAA issues its ROD.

If the public agency has not provided specific instructions, the FAA will approve a mixed level collection under the terms of paragraph 10-24c with the higher level set at the amount requested by the public agency in its application. To avoid automatic approval of mixed level collection, it is critical for the public agency to identify another preferred alternative in its consultation and its application or amendment.

c. Higher PFC Levels For a Portion of PFC Authority. If the share of costs qualifying at \$4 or \$4.50 falls below the thresholds specified in 10-24a, but the public agency still wishes to collect qualifying PFC authority at the higher than \$3 level, the FAA may approve the collection of a \$4 or \$4.50 for a portion

of collection authority, with the remaining portion to be collected at the \$3 level. This type of authority, allowing two separate collection levels during one application, is referred to as "mixed level" authority. The \$4 or \$4.50 collection authority would be limited to the period of time required to collect, through the \$1 or \$1.50 premium, the value of the qualifying premium projects (see Example 2 of section 10-25). Such limited collection authority for \$4 or \$4.50 could take place at the beginning or end of the authorized collection period for the application, as specified by the public agency in its application or amendment. However, it is expected that public agencies would usually prefer the premium collection to occur at the beginning of the period. The ROD or amendment approval would specify charge effective and charge expiration dates for each level.

The total amount to be collected at the premium level (\$4 or \$4.50) can be determined by multiplying the value of all premium projects by either 4 (in the case of a \$4.00 PFC) or 3 (in the case of a \$4.50 PFC). The amount to be collected at \$3.00 would be determined by subtracting this amount from the total value of all projects approved for PFC funding at any level in the application. This determination can also be expressed as the following equations:

$$NT = T - PT \text{ (If NT is zero or less, the entire application should be collected at the higher PFC level)}$$

$$PT = S \times 3 \text{ (for approvals at a \$4.50 PFC level) or } \times 4 \text{ (for approvals at a \$4.00 PFC level)}$$

and where:

T = the total amount approved for the application;

PT = the premium total or the total amount to be collected at the \$4.00 or \$4.50 PFC level;

NT = the non-premium total or the total amount to be collected at the \$3.00 PFC level; and

S = the sum of the PFC approved amounts for all of the projects approved at the higher PFC level.

Because of the administrative burden to all parties associated with changing PFC levels, the FAA Airports office should strongly recommend that a public agency seeking a higher than \$3 PFC level for an application undertake actions to establish adequate 33 percent or 25 percent percentage shares of qualifying projects. Such actions might include advance consultation with FAA Airports offices on the submission of projects meeting priority development needs.

10-25. EXAMPLES OF PFC LEVEL CALCULATIONS FOR SINGLE APPLICATIONS.

Example 1: A public agency new to the PFC program submits a first time PFC application, for which it seeks a \$4.50 PFC level. The application consists of four projects. The public agency seeks \$25 million in authority for the first project, and \$15 million in authority for each of the other three projects. The FAA's review of the application reveals that the \$25 million project does not qualify for \$4.50 (although it would qualify at the \$3 level), but that the other three projects (with a combined value of \$45 million) do qualify. Since more than one-third of value of the projects in the ROD qualify at the higher level (\$45 million at \$4.50 divided by \$70 million of total authority, or 64 percent), the FAA would authorize an overall \$4.50 PFC level for the ROD issued for that application.

Example 2: A public agency new to the PFC program submits a first time PFC application, for which it seeks a \$4.50 PFC level. The application consists of three projects. The public agency seeks \$25 million in authority for the first project, and \$50 million in authority for each of the other two projects. The FAA's review of the application reveals that the \$25 million project qualifies for \$4.50, but that the other two projects (with a combined value of \$100 million) do not qualify. Since less than one-third of the value of the projects in the ROD qualify at the higher level (\$25 million at \$4.50 divided by \$125 million of all authority, or 17 percent), the FAA could not authorize an overall \$4.50 PFC level for the ROD issued for that application. Instead, the FAA, after consultation with the public agency, could approve a \$3 collection level for the whole application, or could specify that either the first \$75 million or the last \$75 million (\$25 million is 33 percent of \$75 million) of the authorized collections under that application be at the \$4.50 level, with the balance of authority (\$50 million) at \$3. The FAA would specify dates in the ROD for when both the \$3 and \$4.50 collection levels would begin and end.

In this example, if the qualifying authority had been at least 25 percent but less than 33 percent of the total authority in the application, the FAA could also have approved the entire application at a \$4 level, if the public agency had specifically requested such treatment in its application.

Example 3: A public agency has one ROD outstanding which authorizes PFC collections until December 1, 2011. Three projects are approved in the ROD, one at \$150 million, one at \$75 million, and the third at \$50 million. The public agency submits a Type B amendment to increase the PFC level to \$4.50 from the approved \$3 level. The FAA's review of the amendment reveals that the \$150 million project does not qualify for \$4.50, but that the other two projects (with a combined value of \$125 million) do qualify. Since more than one-third of value of the projects in the ROD qualify at the higher level (\$125 million at \$4.50

divided by \$275 million of all authority, or 45 percent), the FAA would authorize an overall \$4.50 PFC level for that amended ROD.

10-26. PROCEDURE FOR MULTIPLE RODS. A public agency may have several approved applications (RODs), each covering multiple projects, outstanding at the time it submits a new application or amendment request to the FAA. Collection for each ROD is authorized sequentially in the order that the RODs are approved. Thus, the collection authority for a second ROD begins once the collection authority for the first ROD expires. The collection authority under any one of these RODs may be several months or several years in duration. Some public agencies desiring to implement a \$4.00 or \$4.50 PFC level as soon as possible may have more than one ROD outstanding and may desire to maintain a level \$4.00 or \$4.50 collection across the RODs. In many cases each outstanding ROD may contain sufficient premium projects to meet the threshold for a uniform PFC level (a qualifying decision). In that case, the amendments could be submitted by the public agency and processed by the FAA as individual actions, in accordance with the guidance set forth above.

In some cases, a public agency may be concerned that one or more existing RODs do not contain sufficient premium projects to qualify for the uniform higher level PFC. (a non-qualifying decision) In such cases a public agency may wish to combine the existing RODs or to combine a new application which exceeds the threshold for uniform collection with an existing application that does not, to maintain a uniform PFC level. In these circumstances, the public agency may request the FAA to commingle authority across applications.

This section describes standard procedures for processing such a request. These procedures are intended to provide flexibility to public agencies to achieve a uniform PFC level while maintaining the practice of treating applications as the principle unit of administration of the PFC program. In addition, as is the case with single applications containing multiple projects, the procedures reflect the current practice of permitting commingling of PFC funds across projects, once a public agency obtains use approval. As the FAA gains experience with administering the higher PFC authority, we may adjust the procedures and consider deviations from the procedures based on the circumstances of individual cases consistent with legal framework for the program.

Commingling may be done only upon the specific request of the public agency, in connection with the filing of appropriate type B amendments and, if approval is sought for new projects, a new application. The type B amendment must be filed for each ROD that the public agency desires to commingle and the public agency must indicate its intention to request commingling in the consultation. Similarly, for new projects, the consultation and new application must include a specific request for commingling authority.

The commingling of RODs is intended to provide a specific benefit to public agencies and carriers – avoidance of fluctuating PFC levels for airports that have multiple PFC approvals outstanding. The granting of commingling authority will impose additional administrative burdens on the FAA and (to a lesser degree) the public agency. Consequently, a request for commingling authority ordinarily should not be granted unless the request will in fact provide the intended benefit of establishing a consistent PFC level.

Accordingly, the first step in FAA's analysis of a commingling request is to determine whether each of the outstanding decisions designated by the public agency and any new application is a qualifying application. To do this, the FAA Airports office should employ the analysis tools provided in sections 10-22 or 10-24, as appropriate. If the FAA determines that each decision is a qualifying decision, the FAA Airports office will process each decision or application as a separate matter, establishing or amending the charge effective dates and charge expiration dates of each, as appropriate. The FAA in its decision (the ROD or amendment approval letter) will indicate that the commingling request has not been granted because each ROD proposed for commingling is a qualifying decision permitting uniform collection at the higher PFC without commingling. Thereafter, the FAA Airports office should work with the public agency to ensure any new applications submitted contain sufficient qualifying projects to establish the desired PFC level.

If one or more individual decisions or the new application does not contain sufficient qualifying premium projects to meet the threshold for the requested uniform PFC level (a "non-threshold application"), the FAA Airports office will grant the request for commingling the non-threshold application(s) with one or more qualifying applications so that the total amount of high-value projects across the commingled applications meets or exceeds the threshold, based on the total approved value of all commingled applications. Commingling should be limited to those decisions, including a new application, that the public agency has identified for commingling. In addition, commingling should encompass only contiguous applications. To the extent feasible, commingling should be done by combining the non-qualifying decision with later decisions, not earlier ones. This will enable earlier decisions to continue to be administered as individual applications, consistent with existing practice, and thereby reduce the administrative burden associated with commingling across applications. The commingled projects would be combined in a single decision with a new distinct record of decision number. Additional detailed instructions on implementing commingling across applications are set forth below. The notification to the public agency of the FAA's decision will specifically identify any applications being combined as well as any applications that the FAA determined should remain separate.

For commingling across applications to be effective, the qualifying applications to be commingled must have sufficient high value projects to absorb the value of

the non-qualifying projects and continue to meet the threshold for the uniform higher PFC level. It may be prudent for the public agency to consult with the FAA Airports office before initiating airline consultations to assure that the existing applications or new application will likely contain sufficient high-value project(s) to support another non-qualifying decision. The FAA personnel should be careful not to issue statements that predetermine the application review process. In particular, the FAA can identify problems and suggest corrections, but cannot make any assurances to the public agency that would constrain its discretion during the formal evaluation of the application.

a. Combining Projects in Existing Applications. The public agency may request the current impose ROD and one or more existing subsequent RODs be combined in order to maintain a higher PFC level if the projects within one of these RODs do not qualify for the higher level of collection. This situation would be handled through filing Type B amendments for each ROD. As discussed in chapter 12, a public agency must offer consultation with air carriers on Type B amendment requests, including a higher PFC level. In the amendment applications to increase the level of collection, the public agency would also request the FAA combine the applications into a single application. The total PFC amount uncollected approved for each project in the applications being combined would be transferred to the new combined ROD, including all projects that do not qualify for the higher PFC. Therefore, it is important that the public agency be aware that the projects to be combined must have sufficient premium projects to absorb the non-qualifying projects in order to retain the higher PFC level.

In the case of an amendment to an application that is partially collected at the \$3 level at the time the public agency requests commingled \$4.50 or \$4 authority with other RODs, the FAA will allocate collections received for that application (as of the anticipated charge effective date of the higher PFC level) on a pro-rated basis to all projects within that application, regardless of any other allocation shown in the public agency's quarterly reports submitted under §158.63(a). Thus, if 50 percent of collections under an application consisting of two projects will have already been collected as of the charge effective date, with one project initially approved for \$30 million in PFC authority and the other project for \$10 million, the FAA would determine that \$15 million in uncollected authority remained for the former project and \$5 million remained for the latter.

In the case of a ROD for which collections have already been completed, but which is subsequently amended to add more authority to one or more projects, only the added project-specific authority should be counted in the commingling calculation. Authority for projects in RODs not yet under collection at the time of the request should be counted in full.

If the FAA approves the amendments, the public agency would notify the air carriers of the change either by separate correspondence or in the quarterly

report, depending on whether the amendment involves the current impose ROD. The FAA would process an administrative amendment to close out the original non-qualifying ROD(s). If the current ROD is to be amended, that ROD would not be deleted until the 60-day notification time frame (for implementation of the new higher PFC level) has been completed and collection begins on the subsequent ROD. To accomplish deletion, the current ROD would be amended to reduce the total approved collections to the amount anticipated to be collected on the charge effective date for the higher PFC, with that total allocated among projects as outlined above. Any discrepancies between anticipated and actual collections would be reconciled through adjustments to the uncollected authority transferred to the subsequent ROD.

In addition, if the charge effective date for the new ROD is close to the required implementation date for a project that has not been implemented, the FAA Airports office should verify that the project will be implemented within the required time-frame. If there is a substantial likelihood that the project will not be implemented in a timely manner, the project may not be suitable for inclusion in the new ROD. Please consult with APP-530 regarding the disposition of such a project.

b. Combining Projects with a New Application. The public agency may request an existing ROD be combined with a new application in order to maintain a higher PFC level if the projects within the existing ROD do not qualify for the higher level of collection. The public agency would consult with the air carriers regarding the new application and a Type B amendment for the existing ROD to request the higher PFC level. In the amendment request for the existing ROD, and in the new application the public agency would also request the FAA combine the existing ROD with the new application.

The total uncollected PFC amount approved for each existing approved project in the applications being combined would be transferred to the new application, including all projects that do not qualify for the higher PFC. Therefore, it is important that the public agency be aware that sufficient premium projects must be included in the applications to be combined to absorb the non-qualifying projects in order to retain the higher PFC level. The value of projects partially collected under a current application should be pro-rated as specified in 10-26.a. In addition, for any project in the existing ROD that has not been implemented, the required original project implementation date must be retained in the new consolidated ROD.

If the FAA approves the application, the public agency would include information pointing out that the new ROD includes some previously approved projects that have been moved to this new decision in the §158.43 notification to the air carriers. The FAA would process an administrative amendment to close out the original non-qualifying ROD. If the current ROD is to be amended, that ROD would not be deleted until the 60-day notification period for the new ROD has

been completed and collection begins on the subsequent application. To accomplish deletion, the current ROD would be amended to reduce the total approved collections to the amount anticipated to be collected on the charge effective date for the higher PFC, with that total allocated among projects as outlined above. Any discrepancies between anticipated and actual collections would be reconciled through adjustments to the uncollected authority transferred to the subsequent ROD.

In addition, if the charge effective date for the new ROD is close to the required implementation date for a project that has not been implemented, the FAA Airports office should verify that the project will be implemented within the required time-frame. If there is a substantial likelihood that the project will not be implemented in a timely manner, the project may not be suitable for inclusion in the new ROD. Please consult with APP-530 regarding the disposition of such a project.

10-27. EXAMPLES OF PFC LEVEL CALCULATIONS FOR MULTIPLE RODS.

Example 1: A public agency has one ROD outstanding and plans to submit a new application. In addition, it wishes to implement a \$4.50 collection level as soon as possible. Accordingly, the public agency submits a Type B amendment to increase the PFC level for the existing ROD to \$4.50 from the approved \$3, and applies for a \$4.50 level in the new application. The ROD under which the public agency is currently collecting has two projects for which \$70 million in PFC collections were approved for each. The FAA estimates (based on the most recent quarterly report) that, at the time of a new charge effective date authorizing a \$4.50 level, half the authorized amount of this ROD will have already been collected at the \$3 level. In addition, both of these projects have been implemented. The new application has three projects that the FAA will approve at \$50 million each. The FAA's review of the amendment reveals that the two \$70 million projects in the first ROD do not qualify for \$4.50, but that the three \$50 million projects in the new application do qualify.

In the case of the first ROD, neither project qualifies for the \$4.50 level, but only half the PFC authority remains uncollected. Thus, \$70 million in non-qualifying authority remains, compared to \$150 million in authority qualifying at \$4.50 in the second application. The total share of uncollected authority qualifying in the two commingled RODs would be 68 percent (\$150 million at \$4.50 divided by \$220 million of all uncollected and to-be-approved authority). Thus, the FAA will shift the projects from the first ROD to the second, new, ROD. Although the total value of the second ROD would be the total value of each project, i.e. \$290 million, only \$220 million in new collections (at the \$4.50 PFC level) will be authorized. The FAA will also process an administrative amendment, effective on the same date as the charge effective date for the new ROD, which closes out the first ROD.

Example 2: A public agency has two RODs outstanding and requests that they be evaluated for \$4.50 PFC levels. The first ROD, under which the public agency is currently collecting, has two projects for which \$50 million in PFC collections are authorized for each. Both of these projects have been implemented. Based on the most recent quarterly revenue report submitted by the public agency, the FAA estimates that half the authorized amount of this ROD will have been collected at the \$3 level by the time of the charge effective date for a potential \$4.50 charge. The second ROD (not yet under collection) has two projects approved at \$75 million each. Although neither of these projects has been implemented, the most recent quarterly report submitted by the public agency shows that each project is scheduled to be implemented within the required timeframes. The public agency submits Type B amendments to increase the PFC level to \$4.50 from the approved \$3 for both RODs. The FAA's review of the amendments reveals that the two \$50 million projects in the first ROD do not qualify for \$4.50, but that the two \$75 million projects in the second ROD do qualify. As noted, only half the PFC authority remains uncollected in the first ROD. Thus, \$50 million in authority not qualifying at \$4.50 remains in the first ROD, compared to \$150 million in authority qualifying at \$4.50 in the second ROD. The total share of uncollected authority qualifying at \$4.50 would be 75 percent (\$150 million at \$4.50 divided by \$200 million of all uncollected authority). The FAA would issue a new third ROD combining the first two at the \$4.50 level, authorizing \$200 million in collections at the \$4.50 level. At the same time, the FAA would close out the first two decisions by administrative amendments.

Example 3: A public agency has two RODs outstanding for which it requests \$4.50 authority. The first ROD, under which the public agency is currently collecting, has two projects for which \$40 million in PFC collections are authorized for each. Based on the most recent quarterly revenue report submitted by the public agency, the FAA estimates that half the authorized amount of this ROD will have been collected at the original \$3 level by the time of the charge effective date for a potential \$4.50 charge. The second ROD has two projects approved at \$20 million each. All four projects have been implemented. The public agency submits Type B amendments to increase the PFC level to \$4.50 from the approved \$3 for both RODs. The FAA's review of the amendments reveals that the two \$40 million projects in the first ROD do not qualify for \$4.50, and that only one of the two \$20 million projects in the second ROD qualifies. Thus, the total share of uncollected premium authority would be 25 percent (\$20 million at \$4.50 divided by \$80 million of all uncollected authority), attributable to the second ROD. The FAA could not authorize a \$4.50 level for each ROD on a standalone basis because the 33 percent threshold is not met by combining the RODs. However, because the 25 percent threshold has been met, the FAA could issue a new ROD combining the two RODs at a \$4 PFC level if enabled by the public agency's response in item 14(b) of the Attachment B. Alternatively, again based on the public agency's response to item 14(b) in the Attachment B, the FAA could evaluate the amendments

independently (as non-commingled RODs), approving a \$4.50 PFC level for the second ROD (because the qualifying project in this ROD constitutes 50 percent of the authority of that ROD), while leaving the first ROD at the \$3 level. The start date of the \$4.50 authority would occur at the charge expiration date of the \$3 authority from the first ROD. In this example, if the public agency had not specified how the FAA should treat the RODs if the \$4.50 threshold were not met, the FAA would evaluate the amendments independently.

Example 4: A public agency is submitting a new application (application C) and has two RODs (A and B) outstanding. It requests \$4.50 authority for all three. The first ROD, under which the public agency is currently collecting, has two projects, both of which have been implemented, for which \$75 million in PFC collections are authorized for each. Based on the most recent quarterly revenue report submitted by the public agency, the FAA estimates that half the authorized amount of A will have been collected at the \$3 level by the time of the charge effective date for a potential \$4.50 charge. The second ROD has two projects, which have already been implemented, approved at \$10 and \$90 million. The new application C has a single project at \$100 million.

The FAA would evaluate the new application C under the guidance in section 10-24. In this example, the project in the new application C is found to qualify for a \$4.50 level. With regard to the amended RODs A and B, the FAA's review of the amendments reveals that the two \$75 million projects in the first ROD qualify for \$4.50, but that only the \$10 million in the second ROD qualifies at that level. Further analysis shows that combining ROD B with new application C will result in a sufficiently high amount of qualifying projects (\$110 million of \$200 million total value of the two applications or 55 percent) that the PFC level for this new ROD could be set at a \$4.50 level. Thus, the FAA would amend ROD A to the \$4.50 level, issue a new ROD C which combines the projects from ROD B and the new project, and issue an administrative amendment closing out ROD B.

10-28-10-30. RESERVED.

SECTION 5. OTHER MODIFICATIONS TO THE PFC PROGRAM

10-31. ADDITIONAL REDUCTION IN AIP APPORTIONMENTS. AIR 21 provides that, in the case of a medium or large hub airport where a PFC higher than \$3 is collected, AIP funds apportioned under 49 U.S.C. 47114 must be reduced by an amount equal to the lesser of 75 percent of the projected revenues from the PFC in the fiscal year or 75 percent of the passenger entitlements otherwise due to the airport. This reduction compares to the 50 percent reduction that applies to medium or large hub airports that collect a \$3 or less PFC. The reduced apportionment takes effect in the first fiscal year following the year in which the collection of the higher PFC level begins.

The FAA Airports office should remind a public agency which is considering requesting a PFC level above \$3 that the reduced AIP apportionment will be implemented at the beginning of fiscal year following the charge effective date of the higher collection level. This information may affect the timing of a new application or amendment request, or the requested charge effective date, particularly if the higher PFC collection level, when being approved for the first time, cannot begin until late in a fiscal year. In such cases, the reduction of AIP entitlements at the start of the next fiscal year may exceed the amount of funds that could be earned in the partial current fiscal year from the higher PFC.

In the event that a public agency determines that a charge effective date for a PFC level above \$3 should not start until the beginning of the next fiscal year, the public agency should specify this date in its amendment notice or its application, so that the FAA's decision can reflect this date. If a public agency decides after a charge effective date has been approved by the FAA to defer this charge effective date, the instructions in 4-10(b) of this order would apply.

10-32. OTHER EFFECTS OF AIR 21 ON THE PFC PROGRAM. AIR 21 also affects the PFC program in other ways that apply to PFC authority in general and not specifically to the increase in the PFC level. These effects are summarized below, with citations to the place in this order where their implementation is addressed.

a. Competition Plans. Beginning FY 2001, the FAA cannot approve a PFC for a large or medium hub airport at which one or two air carriers control more than 50 percent of the passenger boardings (a "covered airport") unless the public agency has submitted a competition plan to the Administrator. The guidance for the competition plan is provided through the AIP under Program Guidance Letter 00-3, Requirement for Airline Competition Plans, issued on May 8, 2000. APP will provide an annual list to the FAA regions of medium and large hub airports required to submit a competition plan.

The remainder of this section discusses circumstances in which new or continued PFC authority would be conditioned on submission of a competition plan or an update. As a practical matter, we expect all covered airports to submit competition plans or updates regularly to maintain eligibility for AIP grants. Consequently, the FAA Airport offices should be required to apply this section only rarely.

In addition, beginning in fiscal year 2001, a public agency cannot impose a PFC with respect to a covered airport unless the public agency has submitted a competition plan. *This restriction does not apply to PFC authority approved before the date of the enactment of AIR 21 (April 5, 2000).* Even if the FAA were to approve new PFC authority at a covered airport after April 5, 2000, but before October 1, 2000, the public agency must submit a competition plan at least 60 days prior to the approved charge effective date, to collect that PFC authority in

FY 2001 or thereafter. Similarly, an airport that is not a covered airport at the time of a post-April 5, 2000, PFC approval, but which subsequently becomes a covered airport, must thereafter submit a competition plan if it is to continue to collect such PFC authority. However, the public agency need not submit a competition plan for a covered airport that is collecting under pre-April 5, 2000, PFC authority (although without a competition plan, the airport could not receive AIP grants).

New PFC authority that would require a competition plan for collection would be an increase in PFC level (from \$1, \$2, or \$3 to \$4 or \$4.50) and/or new collection authority applied for through an application or a Type B amendment and approved by the FAA on or after April 5, 2000. If no competition plan is submitted by a covered airport, only PFC authority approved prior to April 5, 2000 (or as amended under a Type A amendment, which does not require FAA approval) could be collected in and after FY 2001.

For example, in FY 2001, a public agency may seek to increase its previously approved PFC collection authority by more than 15 percent through a Type B amendment. Whereas the previously approved (i.e., approved before April 5, 2000) collection authority would have expired in December 2003, the amendment would extend collection authority to December 2004. FAA could not approve the new collection authority attributable to the Type B amendment unless a competition plan had been submitted. However, the public agency could continue to collect the PFC under the original authority until it expires in December 2003, even without submitting a plan. In addition, the public agency could implement a 15 percent or less increase in FY 2001 or afterwards through a Type A amendment without a competition plan, because this type of amendment is not subject to FAA approval.

AIR 21 provides for the periodic review of the competition plans for PFC purposes and the FAA needs updated plans for action on subsequent PFC applications. In addition, FAA must have a current competition plan to issue each AIP grant. In an effort to minimize resource impacts, airports can satisfy these requirements by submitting updates to previously submitted plans rather than full competition plans. To satisfy the statutory requirement to review implementation and for an airport to keep its plan current, it will be necessary for public agencies to provide an annual update to their plan before the FAA can approve new PFC authority or process entitlement/discretionary grants.

In order to minimize submittal requirements, an airport submitting a competition plan to satisfy AIP requirements will be considered to have satisfied PFC requirements and will not be required to resubmit its competition plan as part of a PFC application.

The FAA Airports office will utilize the FAA response section of Attachment F for every application for new collection authority or collection authority at a higher

PFC level at covered airport to document the submission of a qualifying competition plan. In the case of an amendment, the FAA will prepare a summary for the application file indicating the submission of such a plan. The ROD or amendment will include the following paragraph:

Compliance with Subsection 47106(f) and 40117(k) Governing Submission of a Competition Plan. In accordance with §158.29(a)(1)(vi), the FAA finds that the [public agency name] has complied with the requirement to submit a competition plan.

b. Exemptions. AIR 21 exempts certain new classes of air carriers or air service from PFC collections. In particular, a PFC may not be collected on flights, including flight segments, between two or more points in Hawaii, or aboard an aircraft having a certificated seating capacity of less than 60 passengers in Alaska.

The Hawaii exemption applies to any ticketed flight that begins and ends in Hawaii, as well as any flight segment between two Hawaiian locations for which a ticket is issued that is part of a round trip flight to the U.S. mainland or Alaska. In the case of a flight between the U.S. mainland or Alaska and Hawaii, only a ticketed segment between two Hawaiian locations would be exempt--all other segments of the flight remain potentially subject to a PFC.

The Alaska exemption applies to any enplanement in Alaska on an aircraft having a certificated seating capacity of less than 60 seats. Most of these flights will be internal to Alaska, and in such cases no PFC would be charged on a round trip. However, on a round trip flight between Alaska and the lower 48 states by an aircraft with a certificated seating capacity of less than 60 passengers, the PFC could be assessed at airports in the lower 48 states, but not at airports in Alaska.

Previous exemptions (PFC's may be collected on no more than 2 boardings on a one-way trip or a trip in each direction of a round trip; no PFC collections on Essential Air Service routes; and no PFC's on frequent flyer and non-revenue passengers) remain in effect.

c. Exclusions. AIR 21 codified the existing exclusion authority provided in the PFC regulation, in which a public agency may request that collection of PFC's not be required of passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than 1 percent of the total number of passengers enplaned annually at the airport at which the fee is imposed. In addition, AIR 21 expands this authority to enable a public agency to request an exclusion for air service to isolated communities. This new exclusion category consists of passengers enplaned on a flight to an airport that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

an airport in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a state. The public agency may request any or all of these exclusions.

d. Expanded PFC Eligibility. AIR 21 extends PFC eligibility to certain items not eligible for AIP funding. Terminal development incurred after August 1, 1986, at an airport that did not have more than 0.25 percent of the total annual passenger boardings in the U.S. in the most recent calendar year for which data are available (meaning an airport smaller than a medium hub) and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 is now PFC eligible.

In addition, the law clarifies the PFC eligible costs for terminal gates and related areas. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, the project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door, and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate. In the case of a project to build gates and related areas for both the dominant carrier and carriers with less than 50 percent of annual boardings, only those gates and related areas built for and used by the non-dominant carriers would be eligible for this authority. The FAA does not construe this expanded gate and related area eligibility to include ineligible terminal space (e.g., concession space or administrative offices) not integral to the gate facility.

AIR 21 also expands AIP eligibility (and therefore PFC eligibility) to runway incursion prevention devices, emergency call boxes, windshear detection devices, and some pavement maintenance, and clarifies the eligibility of specified intermodal connection items. Appropriate AIP guidance should be consulted for more information on the eligibility of these items.